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12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 PACIFIC GAS AND ELECTRIC
19 COMPANY,

20 Defendant.
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Case No. CR 14-0175 WHA

**AMICUS BRIEF II IN OPPOSITION TO
PG&E'S MOTION TO RECONSIDER
ORDER MODIFYING CONDITIONS OF
PROBATION**

Judge: Hon. William Aslup

1 *Amici* Alex Cannara and Gene A. Nelson respectfully offer this brief in support of
2 the April 29, 2020 modifications of PG&E’s probation conditions (April 29 Order, ECF
3 No. 1186) The April 29 Order protects public safety consistent with this court’s
4 jurisdiction over PG&E’s probation. Federal probation oversight does not usurp California
5 Public Utilities Commission (CPUC) jurisdiction, contradict CPUC orders, nor displace
6 CPUC regulation. Moreover, the CPUC Wildfire Safety Division’s oversight of PG&E’s
7 Wildfire Safety Mitigation Plans (WMP) does not consider PG&E’s recidivist history of
8 felony violations of safety rules and its 84 felony criminal homicides committed in
9 violation of its probation.

10 I. **BACKGROUND FOR APRIL 29 ORDER**

11 Deficiencies in Pacific Gas& Electric (PG&E) vegetation management on its
12 overhead electric distribution lines and defective equipment on its transmission lines have
13 and will cause deadly catastrophic fires unless corrected. On April 29, 2020, the Court
14 ordered PG&E to retain in-house inspectors to double check its vegetation management,
15 and further, the Court ordered PG&E to itemize and identify the age of its transmission
16 line equipment. PG&E has requested reconsideration of the judge’s order and appealed the
17 order to the Ninth Circuit, and resists conducting the activities ordered on April 29, 2020.

18 There is a substantial record supporting the April 29 Order. On June 16, 2020,
19 PG&E pled guilty to an 84 count indictment¹ for criminal homicides in connection with
20 the Camp Fire it caused in November 2018.² The Butte County District Attorney issued a
21 “People’s Statement of Factual Basis in Support of the Pleas and Sentencing Statement”
22 that provided PG&E recklessly caused the Camp Fire and was guilty of 84 counts of
23 criminal manslaughter in violation of Penal Code §192(b)). (Docket No. 1220-1)

24 The California Public Utilities Commission’s (CPUC) Safety Enforcement
25 Division (SED) determined PG&E’s violations of fire safety rules were associated
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28 ¹ <https://www.google.com/search?client=firefox-b-1-d&q=butte+county+indictment+of+pge>
 ² https://www.youtube.com/channel/UCyTCqtrn7O_iTaFYoVlIjoQ/videos

1 with 16 fires caused by PG&E operations in 2017 and 2018. (CPUC Decision 20-
2 05-019, pp. 9-13) PG&E's violations included:

- 3 • GO 95 Rule 31.1 – Failure to identify and abate hazardous
- 4 • GO 95 Rule 31.1- Inspection Records not maintained
- 5 • GO 95 Rule 35 – Vegetation clearance not maintained
- 6 • GO 95 Rule 38 – Conductor clearance not maintained
- 7 • GO 95 Rule 31.1 – Repair Records not maintained

8 This Court's April 29 Order is tailored to the circumstances of PG&E's actual criminal
9 record by because it orders PG&E to obtain transmission facility records and take action to
10 address its aging facilities, both of which were predicate facts that led PG&E to commit 84
11 counts of involuntary manslaughter and 1 count of unlawful fire start in Butte County.
12 Rather than relying on the standard-based rules of California Public Utilities Code § 451
13 that requires safe, reliable service with adequate facilities at just and reasonable rates, this
14 court's order will both rehabilitate PG&E and foster public safety consistent with the
15 federal criminal code. Indeed, this Court's April 29 Order addresses a gap in federal and
16 state utility governance that PG&E has exploited to evade record-keeping responsibilities
17 and to continue operating century old equipment without analysis of the safety risks.

18 It is up to this Court to determine what PG&E's probation conditions should be for
19 its federal crime, not the CPUC. The CPUC's Comments to this Court about the proposed
20 modification of PG&E's probation stated that "PG&E refused to admit that it violated
21 applicable laws, rules and regulations," but that PG&E "does not dispute that its electric
22 facilities played a role in the ignition of all [sixteen] fires for which [the Safety and
23 Enforcement] found violations." *Amici* observe that PG&E's violations of the CPUC's
24 rules, orders, decisions, resolutions, and the California Public Utilities Code were predicate
25 acts to its commission of 84 manslaughter counts and 1 count of unlawfully starting a fire
26 to which PG&E pled guilty.

27 Lives are at risk in these jurisdictional fissures. PG&E's appeal of this Court's
28 order and its petition for reconsideration reflect its desire to not conduct the record search

1 and operational analysis this Court's April 29 Order required. The CPUC has made no
2 parallel order requiring those steps. PG&E would have the Court and the public rely on its
3 professed intent to comply with CPUC safety standards. But as set forth herein, PG&E
4 takes refuses to take responsibility for its actions.

5 The Court's first condition of PG&E's probation terms was a simple but critical
6 one: "(1) While on probation, PG&E shall not commit another Federal, State, or local
7 crime." (ECF No. 919) PG&E committed 85 felonies while on probation in direct
8 violation of this probation condition. This Court has the authority and responsibility to
9 determine whether PG&E violated its criminal probation, to determine whether PG&E's
10 probation conditions should be modified, and to examine whether the length of PG&E's
11 probation should be extended. In so doing, the Court should find PG&E's continuing
12 criminal conduct in violation of its probation warrant this modification and extension of
13 PG&E's probation.

14 II. PG&E REFUSES TO TAKE RESPONSIBILITY

15 PG&E refuses to acknowledge its violations of safety rules has caused catastrophic
16 fires. As stated above, the CPUC's SED investigated 18 fire incidents that occurred over
17 2017 and 2018, and determined that PG&E was responsible for 16 of these wildfires.
18 (D.20-05-019). (ECF No. 1217, p. 14) These wildfires are, in 2018, the Camp Fire, and in
19 2017, the Adobe, Atlas, Cascade, Norrbom, Nuns, Oakmont/Pythian, Patrick, Pocket,
20 Point, Potter/Redwood, Sulphur, Youngs, Lobo, and McCourtney Fires. (D.20-05-019).
21 (ECF No. 1217, p. 14) The CPUC notes "PG&E **refused** to admit that it violated
22 applicable laws, rules and regulations. *Id.* at 15" (D.20-05-019). (ECF No. 1217, p. 14)

23 On June 16, 2020, after pleading PG&E guilty to 84 counts of criminal homicide in
24 the Camp Fire, PG&E's Chief Executive Officer William Johnson represented it was
25 PG&E equipment that caused the fire--not PG&E's violations of the fire safety rules.

26 PG&E refuses to establish an in-house inspection system to keep honest its
27 distribution line vegetation management program. PG&E refuses to itemize and age the
28 equipment on its transmission lines. The SED identified vegetation management and

transmission equipment failures as the primary causes of the PG&E catastrophic fires in 2017 and 2018. (D.20-05-019, pp. 9 -13)

Instead, PG&E asks the Court to defer the duty to oversee PG&E's probation to the CPUC's Wildfire Safety Division (WSD). Rather than require safety inspections to double-check vegetation management on PG&E's distribution lines or catalogue the items and age of transmission equipment likely to fail and cause fires, the WSD "has developed a **model** for evaluating current and projected wildfire risk reduction performance." The WSD has adopted a gentle approach to regulating convicted murderer PG&E: "It is important to note that this model is not designed to immediately penalize utilities for poor performance, but rather it is an effort by the WSD to work collectively with the utilities it regulates to facilitate improvement by identifying best practices, current strengths and current weaknesses across the utility landscape."⁷

III. PG&E HAS SHOWN IT CANNOT BE TRUSTED

PG&E cannot be trusted. For example, the Company's duplicity was documented in the Butte County District Attorney's Camp Fire Report (ECF No. 1220-1, pertinent parts provided here):

IX. INSPECTION AND PATROL OF THE CARIBOU-PALERMO LINE

Based upon PG&E records and flight records obtained from their contracted helicopter company, the evidence established inspections and patrols of the Caribou-Palermo line **did not comply with the standards set forth in the ETPM**⁸ and did not meet the requirements of the law or the regulatory agencies.

Routine inspection and patrol records for the Caribou-Palermo line were obtained back to 2001.

⁷ 2020 Wildfire Mitigation Plan Final Action Statements and Ratified Resolutions <https://www.cpuc.ca.gov/SB901/>

⁸ PG&E's Electric Transmission Preventative Maintenance Manual

1 According to PG&E, **no inspection or patrol records prior to 2001 could**
2 **be located.**⁹ Based upon the inspection and patrol records the evidence
3 established that the Caribou-Palermo line was subjected to “Detailed Ground
4 Inspections” in 2001, 2003, 2005, 2009 and 2014. Based upon the inspection
5 and patrol records the evidence established the Caribou-Palermo line was
6 subjected to “Annual Aerial Patrols” in 2001, 2002, 2004, 2006-2008, 2010-
7 2013, 2015-2018. There is no record of any climbing inspections, detailed
8 ground inspections above 10’ or aerial inspections conducted on the Caribou-
9 Big Bend section of the transmission line. All of the inspection and patrol
10 records were reviewed and all of the troublemen/linemen who conducted the
11 inspections and patrols were interviewed. (ECF No. 1220-1 p. 39)

12 **

13 However, according to this 2014 report, those missing towers were physically
14 inspected in August 2014, including a previously documented issue on tower
15 22/188. The previously documented issue on Tower 22/188 was the
16 replacement of the parallel groove connectors identified during the 2009
17 Detailed Ground Inspection.

18 6) The lineman assigned to assist with the 2014 Detailed Ground Inspection
19 of the Caribou-Palermo line **was not trained to complete the ground**
20 **clearance measurements.** According to PG&E policy, clearance
21 measurements must include the measurement, and the date, time and air
22 temperature when the measurement was taken. **Although the report shows**
23 **the clearance measurements were done** concurrently with the inspection,
24 **the evidence established they were not.**** The result was the dates and times
25 of the clearance measurements documented in his **reports were not accurate.**

26 On June 26, 2018, a PG&E work order requiring climbing inspections of all
27 Caribou-Palermo line structures was issued by a PG&E Tower Department
28 supervisor. The supervisor was interviewed. The supervisor **could not**
provide any reason or rationale for the work order. Specifically, the
supervisor stated that the work order was requested by someone else **and his**
job was simply to compile the information into a template report and
forward the template report to the appropriate work group. (ECF No. 1220-
1 p. 46)

PG&E was unable to provide any further information. “PG&E’s inspection
records do not identify the factors that led to the selection of the Caribou
Palermo 115 kV Transmission Line as one of the lines selected for climbing
inspections as part of this effort. PG&E understands that the age of lines was
a factor that was considered in their selection.” (ECF No. 1220-1 p. 46)

⁹ All bold in these passages are emphasis added.

1
2 Beginning in September 2018 climbing crews from the PG&E Tower
3 Department climbed and inspected 80 towers on the Caribou-Palermo line.
4 The vast majority of the towers climbed and inspected were on the Palermo-
5 Big Bend section of the Caribou-Palermo line. "PG&E understands that the
6 reason these approximately 80 towers were selected first and the order in
7 which they were inspected was determined by the Tower Department based
8 on various considerations, including weather conditions and crew
9 availability." (ECF No. 1220-1 p. 46)

10 All of the towers climbed in September and October 2018 were subjected to
11 WSIP enhanced inspection starting in December 2018. The WSIP enhanced
12 inspections documented problems and defects on numerous towers that were
13 not discovered/detected/documented during the September 2018 climbing
14 inspections. (ECF No. 1220-1 p. 46)

15 The fact that **PG&E has no explanation for how or why or by whom the**
16 **decision to conduct climbing inspections was made is disturbing but not**
17 **unusual.** Numerous decisions and policies were investigated. As to many
18 decisions and policies, **PG&E was unable to provide any documentation as**
19 **to who made the decision, how the decision was made and upon what the**
20 **decision was based.** This inability to determine who made decisions and upon
21 what those decisions were based, **frustrated efforts** to identify individuals
22 potentially personally liable for policies that lead to the conditions which
23 caused the Camp Fire. (ECF No. 1220-1 p. 46)

24 PG&E agents are now trying to keep secret the names of these PG&E
25 employees who were part of the Butte County Grand Jury Proceeding. (See 3rd
26 Appellate District Case No. C092045).

27 IV. WILDFIRE SAFETY DIVISION INSUFFICIENT FOR A 28 RECIDIVIST CRIMINAL

At the May 28, 2020 probation modification hearing, this Court discussed the run-
around it gets from PG&E when it exercises its authority to hold its probationer
accountable. (Reporter's Transcript (RT) 72:4-5) The Court stated: "There are two sets of
problems. One is -- concerns the distribution lines. The other concerns the transmission
lines." (RT 68:21-23) The Court identified related issues:

"Well, the -- so the issue is potential communications and misdirection because
PG&E is outsourcing all of this work and does not have in-house any of the people who

1 are doing the pre-inspections, nor, for that matter, the post-inspections, to designate what
2 work needs to be done to be in compliance with state law, and for that matter, the wildfire
3 mitigation plans.” (RT 68:6-11)

4 The Court elaborated: “One set of problems concerns the quality of the vegetation
5 management, and the tree-cutting and tree-trimming, that’s what it comes down to. And I
6 guess also the hardening, that’s a separate problem. Okay. So that’s one set of problems
7 related to distribution.” (RT 70:25-71:4)

8 The Court addressed the “second set of problems relates to transmission lines,” and
9 “at least two instances now, the Kincaide as well as the Butte County, where massive fires
10 have started.” (RT 71:5-6, 8-9) “PG&E trots out the inspection reports; the inspection
11 reports say everything was checked. But they’re in such vagueness that it is impossible to
12 go behind it and find out what really happened.” (RT 71:10-14)

13 It is in this context that the Court asked the CPUC and others present, including
14 Amici: “How do we fix that inspection so that it has a better chance – not a perfect chance,
15 but a better chance – of finding the things that are about to go wrong, so we avoid another
16 catastrophic fire from the transmission lines?” (RT 71:19-23) The CPUC stated, “I’m not
17 sure that we would say, ourselves, everything is under control...we’re not getting ahead of
18 the problem. We are trying to get ahead of the problem now.” (RT 73:21-22; 74:1-2)

19 This Court directed an answer to the questions: “How can we solve the two
20 problems that I’ve put on the table, and instead of making a long list of excuses, explain to
21 me what specifically is different you’re doing now or will do that will solve those
22 problems.” (RT 87:24 – 88:2)

23 PG&E and the CPUC ask the Court to have blind faith in the Wildfire Safety
24 Division. But Amici’s investigation reveals the CPUC has outsourced those
25 responsibilities, just as PG&E has failingly outsourced its inspection and vegetation
26 management. The CPUC represents the “WSD’s primary directive is to evaluate and
27 approve or deny electrical corporations” Wildfire Mitigation Plans in accordance with
28 Public Utilities Code section 8385 et. seq. to ensure that the utilities are taking effective

actions to reduce utility-related wildfire risk.” (ECF No. 1217, p. 8)

However, in papers the CPUC filed with the California Department of General Services on or before September 12, 2019, the CPUC admitted the “CPUC needs to develop a strategy for utility Wildfire Mitigation Plans that includes specific goals, actions and performance measures. There are currently no policies or standards that establish criteria for an adequate utility Wildfire Mitigation Plan.” The CPUC admitted the “CPUC does not have staff to develop a Wildfire Mitigation Plan evaluation framework and is therefore requiring a contractor to provide policy consultants to assist with this process.”¹¹ In fact, the Wildfire Safety Division has contracted out the function of reviewing PG&E’s Wildfire Mitigation Plans.¹²

The WSD rationalizes its gentle treatment of PGE: “it is in the best interest of the utilities, ratepayers and other key stakeholders to take this **collaborative**, growth-oriented approach.” The WSD acknowledges “certain utilities are currently on the low end of the range for various categories of performance” However, the “WSD is hopeful that providing clear review and evaluation of performance, including identifying such weaknesses, will help drive change in the utilities, allowing all regulated electric utilities in California to improve wildfire risk reduction performance.”¹³ In other words, as far as safety enforcement, it is business as usual at the CPUC, and the people of California are not safely rely on “hope.”

The WSD approved PG&E’s Wildfire Mitigation Plan for 2020, despite finding over 29 material deficiencies, as shown below. The WSD categorized the deficiencies into three classes: (1) Class A – aspects of the WMP are lacking or flawed; (2) Class B – insufficient detail or justification provided in WMP; (3) Class C – gaps in baseline or

¹¹ <https://publicrecords.cpuc.ca.gov/requests/19-606>

¹² https://www.cpuc.ca.gov/uploadedFiles/CPUCWebsite/Content/About_Us/Organization/Divisions/WSD/Report_WildfireMitigationStrategy_WSD_DRAFT_vF.pdf

¹³ 2020 Wildfire Mitigation Plan Final Action Statements and Ratified Resolutions
<https://www.cpuc.ca.gov/SB901/>

historical data, as required in 2020 WMP Guidelines:

Class A Deficiencies (4)

- PGE-1 PG&E groups initiatives into programs and does not provide granular initiative detail. Class A Deficiency
- PGE-8 Annual risk ranking is quickly out of date Class A Deficiency
- PGE-15 It is unclear how PG&E classifies findings at the appropriate level. Class A Deficiency
- PGE-25 Lack of details in PG&E's WMP on how to address personnel shortages. Class A Deficiency

Class B Deficiencies (20)

- PGE-2 Equipment failure. Class B Deficiency
- PGE-5 PG&E provides little discussion of how it uses the results of relative risk scoring method. Class B Deficiency
- PGE-6 Discrepancy between ignition reduction projections Class B Deficiency
- GE-7 It is not clear if PG&E's line risk scoring sufficiently incorporates all risks that cause ignition and PSPS Class B Deficiency
- PGE-9 How PG&E weighs egress as a risk factor. Class B Deficiency
- PGE-10 PG&E lacks sufficient weather station coverage Class B Deficiency
- PGE-11 Including additional relevant Class B Deficiency
- PGE-12 PG&E's fuse replacement program planned to take 7 years. Class B Deficiency
- Page 13 PG&E does not explain how the factors limiting microgrid deployment will impact its microgrid plans. Class B Deficiency
- PGE-14 Level 3 findings. Class B Deficiency In accordance with GO 95, Rule 18, to determine the priority level classification of an inspection finding, a utility must differentiate the potential severity of the risk to safety or reliability, classified as high (i.e., Level 1), moderate (i.e., Level 2) or low (i.e., Level 3). As shown in Appendix B, Figure 2.1a, PG&E's increased inspection efforts in 2019 generated a huge spike in Level 3 findings which it has 60 months or longer to address. Considering that this determination of risk level is made at the discretion of utilities and directly corresponds to the amount of time allowed to address the risk, the lack of parity with SCE and SDG&E in the number of Level 3 findings gives the WSD concern that PG&E may be using the Level 3 category to avoid fixing problems quickly. In notes to Table 7 of its WMP, PG&E indicates it currently utilizes two models to calculate ignition risk, with a third developed in 2019, all of which produce outputs in

potential structures damaged or acreage burned should an ignition occur. However, it seems as though PG&E is currently prioritizing utilizing these models to enhance and support its PSPS implementation over grid hardening, asset inspections and vegetation management decision-making. While it is encouraging that PG&E is utilizing its meteorology resources to develop models and analyses to support short term initiatives such as PSPS, these resources must be equally leveraged for long-term planning and management of its grid.

- PGE-17 Effectiveness of inspections using infrared technology. Class B Deficiency
- PGE-18 PG&E does not describe in detail how its hazard tree analysis focuses on at-risk trees. Class B Deficiency
- PGE-19 Low pass rate on EVM QA Class B Deficiency PG&E's is falling far short of meeting its stated 92 percent pass rate in EVM inspections, leading to a large volume of re-work and repetitive QA testing that consumes limited resources and lengthens the time required to complete EVM initiatives.
- PGE-20 PG&E is redistributing resources to focus more on transmission clearances. Class B Deficiency
- PGE-21 PG&E fails to describe why additional programs for transmission clearances are necessary. Class B Deficiency
- PGE-23 Vegetation waste and fuel management processes unclear. Class B Deficiency
- PGE-24 Improving prioritization. Class B Deficiency
- PGE-27 Public safety partner coordination. Class B Deficiency
- PGE-28 Lack of justification and detail for PG&E's self-assessed stakeholder engagement capabilities. Class B Deficiency I
- PGE-29 Cooperation and sharing of best practices. Class B Deficiency

Class C Deficiencies (5)

- PGE-3 High incidence of conductor failure. Class C Deficiency
- PGE-4 Capacitor bank failure. Class C Deficiency
- PGE-16 PG&E's record keeping is deficient. Class C Deficiency
- Page 22 Some of PG&E's vegetation management inspectors may lack proper certification Class C Deficiency
- PGE-26 Effectiveness of increased vegetation clearances. Class C Deficiency

Deficiency Of all PG&E ignitions on its distribution system, 37% were caused by equipment failures over the last five years with the largest driver being

1 conductor failures at 19% of total PG&E ignitions (or 53% of all equipment
2 failure driven ignitions). Based on normalized data, this rate is almost 50%
3 higher than other large electrical corporations and has a significant impact
since PG&E has by far the most overhead conductor miles.¹⁵

4 Instead of requiring PG&E to identify and replace its defective equipment likely to
5 cause future fires, the WSD limited the correction to PG&E in its next quarterly report
6 explaining why its “equipment failure rate is so high compared to other large electrical
7 corporations” and addressing “whether its prior maintenance history is causing higher
8 rates of equipment failure.” The WSD required PG&E to include “all places where a
9 court ** found fault with PG&E’s historical equipment maintenance, either with regard
10 to individual assets or its maintenance policies as a whole.”¹⁶

11 The WSD also found a PG&E Class C deficiency, “PG&E has approximately 50%
12 more conductor failure ignitions as a percentage of total ignitions, nearly 2.5 times the
13 number of “conductor failure” driven ignitions per overhead circuit mile compared to peer
14 utilities. Since PG&E has the most overhead circuit miles and thus conductors compared
15 to peer utilities, the high rate of conductor failure poses a serious risk.”¹⁷ Again, the WSD
16 corrective was limited to PG&E presenting in 2021 “a study or analysis showing the root
17 causes of conductor failures on its grid.” The WSD required PG&E to list the “specific
18 locations and assets that are most likely to experience conductor failure.”¹⁸

19 The WSD found another Class deficiency involving PG&E’s capacitor bank
20 failures: “PG&E capacitor bank failures on its distribution system cause 500% higher
21 rates of ignition compared to other large electrical corporations.”¹⁹ The WSD corrective
22 was limited: “In its 2021 WMP update, PG&E shall list and describe mitigation measures
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25 ¹⁵ <https://www.cpuc.ca.gov/SB901/>

26 ¹⁶ <https://www.cpuc.ca.gov/SB901/>

27 ¹⁷ <https://www.cpuc.ca.gov/SB901/>

28 ¹⁸ <https://www.cpuc.ca.gov/SB901/>

¹⁹ <https://www.cpuc.ca.gov/SB901/>

1 that it is undertaking to reduce the likelihood of a capacitor bank ignition.”²⁰ This pattern
2 of the WSD identifying material deficiencies in PG&E’s but then providing gentle
3 conditions of corrections continued in a 20 -page table.²¹

4 In summary, the WSD gently requests future explanations and promises from
5 PG&E; it does not ask PG&E to redress the problems. Thus, this Court’s modified
6 conditions are critical if lives are to be saved in the upcoming fire seasons.

7 **V. MODIFICATION OF PG&E’S PROBATION FOR ITS FEDERAL CRIME**
8 **AND VIOLATION OF PROBATION IS NOT LIMITED BY CPUC**
9 **JURISDICTION**

10 PG&E committed mass and shocking crimes, 85 felonies including 84 counts of
11 Involuntary Manslaughter, while on federal probation for its conviction for multiple willful
12 violations that killed eight people. The Court’s first condition of PG&E’s probation terms
13 was a simple but critical one: “(1) While on probation, PG&E shall not commit another
14 Federal, State, or local crime.” (ECF No. 919) PG&E committed 85 felonies while on
15 probation in direct violation of its first condition of probation. PG&E’s commission of
16 mass manslaughter and its unlawful ignition of a fire while on federal probation, as well as
17 its conduct that led to other fires and violated California law, support modification of
18 PG&E’s probation. *Amici* respectfully suggests that PG&E’s continuing criminal conduct
19 in violation of its probation warrant this Court’s consideration of extending PG&E’s
20 probation.

21 PG&E on June 16, 2020 pled guilty in Butte County, California to 84 individual
22 counts of Involuntary Manslaughter (a violation of California Penal Code section
23 192(b)). This plea was entered following an indictment that named each of the persons
24 killed in the Camp Fire by PG&E’s criminal negligence. PG&E also pled guilty to one
25 count of Unlawfully Causing a Fire (a violation of California Penal Code section 452)
26 which includes three special allegations for PG&E’s causing great bodily injury to a

27
28 ²⁰ <https://www.cpuc.ca.gov/SB901/>

²¹ <https://www.cpuc.ca.gov/SB901/>

1 firefighter; causing great bodily injury to more than one surviving victim; and causing
2 multiple structures to burn.

3 CPUC Decision 20-05-019 alleged and found on May 8, 2020 that PG&E violated
4 several California statutes in the California Public Utilities Code (CA PU Code), CPUC
5 rules orders, decisions and resolutions in connection with the Wine Country Fires in
6 2017 and the Camp Fire in 2018.²² The CPUC's Comments to this Court about the
7 proposed modification of PG&E's probation stated that "PG&E refused to admit that it
8 violated applicable laws, rules and regulations," but that PG&E "does not dispute that its
9 electric facilities played a role in the ignition of all fifteen fires for which [the Safety and
10 Enforcement] found violations." (ECF No. 1217, pp. 14-15) *Amici* observe that PG&E's
11 violations of the CPUC's rules, orders, decisions, resolutions, and the California Public
12 utilities code were predicate acts to its commission of 84 counts of involuntary
13 manslaughter and 1 count of unlawfully starting a fire PG&E pled to in Butte County.

14 *Amici* respectfully suggest that this Court order PG&E to file a statement with this
15 Court identifying each finding of fact or conclusion of law it admits or denies in CPUC
16 Decision 20-05-019. Such an order would develop a factual predicate for probation
17 modification or extension. That order would supplement the factual basis for probation
18 oversight that will arise from this Court's order for PG&E to file a public statement with
19 this Court identifying each statement the truth of which PG&E denies, and if so, the
20 reason for the denial of the facts in the final summary report from the Butte County
21 District Attorney entitled "People's Statement of Factual Basis in Support of the Pleas
22 and Sentencing Statement." This Court ordered that "All other statements therein shall be
23 deemed admitted." (ECF No. 1220)

24 ///

25 ///

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27
28 ²² CPUC, Decision 20-05-019, Decision Approving Proposed Settlement Agreement with Modifications,
Investigation 19-06-015, p. 52 (issued May 8, 2020).

1 This Court has the authority and responsibility to determine whether PG&E has
2 violated its criminal probation, to determine whether PG&E's probation conditions
3 should be modified, and to examine whether the length of PG&E's probation should be
4 extended. The CPUC found in its decision approving PG&E's exit from bankruptcy that
5 based on the record before the Commission "and with the conditions and modifications
6 imposed by this order including the adopted ACR proposals, we find no indication that
7 the plan of reorganization and resulting governance structure as approved by the
8 Commission is inconsistent with the requirements of PG&E's criminal probation."²⁵ In
9 making this decision the CPUC observed that "PG&E seems reluctant to take ownership
10 of its own safety history and acknowledge its failings." (ECF No. 1217, p. 17)

11 In its oversight of PG&E's federal probation, this Court is not required to defer to
12 any judgments of the CPUC or FERC regarding PG&E's criminal conduct and its
13 probation violation. Neither does this Court's federal criminal probation interfere with
14 CPUC jurisdiction under the California Constitution and the California Public Utilities
15 Code, nor FERC's jurisdiction under the Federal Power Act.²⁷ ***FERC has NO jurisdiction***
16 ***over electricity safety***, independent of reliability analysis. The CPUC's newly developed
17 Wildfire Mitigation Plan has not ordered a detailed examination of the lack of PG&E
18 record-keeping on transmission infrastructure, nor required detailed analysis and action to
19 address the risks of infrastructure that has outlived its useful life.

20 PG&E has displayed a pattern of failing to admit responsibility for violating laws
21 as well as CPUC rules, orders, resolutions, and decisions. PG&E failed to admit before
22 Butte County the facts that supported its conviction but did not contest those facts. *Amici*
23 support Judge Alsup's order to request PG&E to admit or deny the facts in the Butte
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26 ²⁵ CPUC, DECISION APPROVING REORGANIZATION PLAN, Decision 20-05-053,
Investigation 19-09-016, p. 71 (May 28, 2020).

27 ²⁷ The Federal Power Act, 16 U.S.C. §§ 791 *et seq.*, provides the Federal Energy
28 Regulatory Commission (FERC) with jurisdiction over electricity reliability (16 U.S.C. §
824o) and just and reasonable rates (16 U.S.C. § 824d).

County report. *Amici* respectfully suggests that this Court order PG&E to admit or deny the findings of fact and conclusions of law in CPUC Decision 20-05-053 regarding the violations of CPUC rules, orders, decisions, resolutions, and the California Public Utilities Code in connection with the Wine Country and Camp Fires. PG&E's violations formed the factual and legal predicate for PG&E's criminal conduct that led to the death of 84 people and the catastrophic destruction fueled by the Camp Fire.

To address the roots of PG&E's *criminal thinking* that fuels its pattern of criminal conduct, *Amici* respectfully suggests that this Court order PG&E to implement testing and training to recognize and end criminal thinking pervading PG&E. Such an order is an outgrowth of the probation condition requiring ethics training at PG&E.²⁸ Ordering testing and training to recognize and end criminal thinking acknowledges that criminal thinking undermines ethics and public safety. Testing and training to identify and stop criminal thinking would address the roots of PG&E's repeated crimes, enhance respect for law, and protect the safety of all Californians affected by PG&E's pattern of criminal conduct.

1. Amici Respectfully Suggest that this Court Order Testing and Training to Identify and End PG&E's *Criminal Thinking* that Fuels its Criminal Conduct

Amici respectfully suggests that PG&E has failed to implement an effective ethics program as required by the third condition of its probation. PG&E's probation required that within "six months of the date of the Judgment, PG&E shall develop and submit to the court an effective compliance and ethics program consistent with §8B2.1 (Effective Compliance and Ethics Program)."²⁹ As a repeat offender, PG&E's pattern of criminal

²⁸ See e.g. United States Court. Post Conviction Risk Assessment (PCRA). <https://www.uscourts.gov/services-forms/probation-and-pretrial-services/supervision/post-conviction-risk-assessment> (last visited June 14, 2020) (discussing the tests administered to federal convicts to identify patterns of criminal thinking and requiring training through courses to recognize and end criminal thinking that leads to criminal behavior).

²⁹ United States v. PG&E, Criminal Minutes, Case No.: 14-cr-00175-TEH-1, Jan. 26, 2017; U.S. Dept. of Justice, PG&E Ordered To Develop Compliance And Ethics Program As Part Of Its Sentence For Engaging In Criminal Conduct, Jan. 26, 2017

1 conduct led to 84 deaths and a plea to 85 felonies during its federal criminal probation.
2 PG&E's conduct reveals its *criminal thinking* that fuels its criminal conduct and
3 obstructs rehabilitation under its probation.

4 Amici respectfully suggest that this Court order PG&E to work with the monitor
5 appointed in this proceeding to administer tests of criminal thinking patterns to its
6 Board of Directors, Officers, Executives and Managers, and all personnel responsible
7 for safety activities including record-keeping, inspection, vegetation management, and
8 maintenance. This Court should order PG&E to coordinate with the monitor in this
9 probation to develop and administer tests and courses within six months of its June 16,
10 2020 plea to 85 felonies while under probation. Such an order would create a means to
11 identify and break PG&E's pattern of criminal thinking that drives its criminal conduct.

12 As this Court stated in its proposed modification of the conditions of PG&E's
13 probation in April 2020:

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15 A fundamental concern in this criminal probation remains the fact that
16 Pacific Gas & Electric Company, though the single largest privately-owned
17 utility in America, cannot safely deliver power to California. This failure is
18 upon us because for years, in order to enlarge dividends, bonuses, and
19 political contributions, PG&E cheated on maintenance of its grid — to the
20 point that the grid became unsafe to operate during our annual high winds,
21 so unsafe that the grid itself failed and ignited many catastrophic wildfires.
22 In the past three years alone, PG&E wildfires killed at least 108 and burned
23 22,049 structures. It will take years, now, for PG&E to catch up on
24 maintenance so that the grid can safely supply power at all times. The
25 conditions of probation herein have been aimed at requiring PG&E to do so.
26 It's evident, however, that more is necessary.

27 Ordering testing and training to recognize and end criminal thinking pervading
28 PG&E would address the safety objectives of this criminal probation.

27 [https://www.justice.gov/usao-ndca/pr/pge-ordered-develop-compliance-and-ethics-](https://www.justice.gov/usao-ndca/pr/pge-ordered-develop-compliance-and-ethics-program-part-its-sentence-engaging-criminal)
28 [program-part-its-sentence-engaging-criminal.](https://www.justice.gov/usao-ndca/pr/pge-ordered-develop-compliance-and-ethics-program-part-its-sentence-engaging-criminal)

1 Were an individual convicted for the crime of obstructing the NTSB's
2 investigation and violating the PSA, the court could have ordered that defendant to take
3 a federal Post Conviction Risk Assessment of their criminal thinking when sentenced in
4 2017.³⁰ That convict would have received training years ago to recognize and break
5 patterns of criminal thinking.

6 Corporations cannot be put in jail for their crimes and may pay fines not
7 commensurate with their crimes. PG&E was sentenced in Butte County Superior Court
8 on June 18 and ordered "to pay the maximum penalty of nearly \$4 million for its role in
9 the deaths of 84 people in the devastating Camp Fire of 2018."³¹ Amici respectfully
10 suggest that this Court use its power to order tests and training to root out criminal
11 thinking that leads PG&E to engage in a repeated pattern of criminal conduct.

12 The eight major patterns of criminal thinking recognized by U.S. Courts in
13 criminal conviction, probation, and parole matters are: Mollification, Cutoff,
14 Entitlement, Power Orientation, Sentimentality, Superoptimism, Cognitive Indolence,
15 and Discontinuity.³² PG&E's criminal thinking is evident in its failure to recognize the
16 dangers of operating a century old C-hook to hold up components that support electric
17 lines that transmit tens to hundreds of thousands of volts of electricity per second.

21 ³⁰ United States Court, Post Conviction Risk Assessment (PCRA), [https://www.uscourts.gov/services-](https://www.uscourts.gov/services-forms/probation-and-pretrial-services/supervision/post-conviction-risk-assessment)
22 [forms/probation-and-pretrial-services/supervision/post-conviction-risk-assessment](https://www.uscourts.gov/services-forms/probation-and-pretrial-services/supervision/post-conviction-risk-assessment) (last visited June 14, 2020).

23 ³¹ *PG&E sentenced to max \$4M penalty for criminal convictions in Camp Fire*,
24 DANVILLE-SAN RAMON NEWS, June 18, 2020,
[https://danvillesanramon.com/news/2020/06/18/pge-sentenced-to-max-4m-penalty-for-](https://danvillesanramon.com/news/2020/06/18/pge-sentenced-to-max-4m-penalty-for-criminal-convictions-in-camp-fire)
25 [criminal-convictions-in-camp-fire](https://danvillesanramon.com/news/2020/06/18/pge-sentenced-to-max-4m-penalty-for-criminal-convictions-in-camp-fire).

26 ³² Emma Palmer, Clive Hollin, *The use of the Psychological Inventory of Criminal*
27 *Thinking Styles with English young offenders*, 9, Legal and Criminological Psychology,
28 253, 257, The British Psychological Society (2004) (describing eight major patterns of
criminal thinking identified by Walters); Glen D. Walters, *The Psychological Inventory of*
Criminal Thinking Styles (PICTS): A Review and Meta-Analysis, 3 Assessment (Sept. 9,
2002), 278-91,
doi: 10.1177/1073191102009003007, <https://pubmed.ncbi.nlm.nih.gov/12216785/>.

1 PG&E stipulated to the fact the C-hook responsible for the Camp Fire was consistent
2 with the manufacturer's 1912 design.³³

3 The belief that operating in this manner is safe is consistent with Cognitive
4 Indolence, poor critical reasoning and overreliance on cognitive shortcuts in dealing
5 with social problems,³⁴ in this case health and safety. PG&E's failure to admit that it
6 violated CPUC rules may reflect its sense of Entitlement and Power Orientation. Such
7 conduct reflects Mollification, the tendency to externalize blame for the consequences
8 of criminal offenses, and to offer rationalizations and excuses for committing crimes.³⁵

9 It is beyond the capacity of *Amici* to determine the elements of criminal thinking
10 PG&E continues to embrace and percolate through its culture and conduct. It is within
11 the capacity of this Court's criminal probation jurisdiction to order testing and training
12 for PG&E to identify, examine, and end criminal thinking that leads to criminal
13 conduct.

14 The CPUC's investigation into PG&E's Safety Culture initiated in 2015, Order
15 Instituting Investigation 15-08-019, has not addressed PG&E's criminal thinking.
16 PG&E's plea to 85 felonies committed while on probation underscores the urgent need
17 for training to recognize and break PG&E's criminal thinking patterns that undermine
18 ethical behavior and endanger public safety.

19 If PG&E fails again and the CPUC initiates steps to terminate PG&E's licenses,
20 California will still need someone to operate transmission lines to wheel power to
21 agencies that will provide energy to local customers. (ECF No. 2017, p. 17) We need
22 an inventory of PG&E assets, including its transmission assets, regardless of their age.
23 Examination of PG&E's records, or the lack thereof, and its practices such as relying on
24 visual inspection without regard to equipment age, exposure, and function, are key to
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27 ³³ CPUC, I.19-06-015 COM/DECISION DIFFERENT, App A. Stipulated Facts 109-111.

28 ³⁴ Palmer and Hollin, *supra* note [X, at 257].

³⁵ Palmer and Hollin, *supra* note [X, at 257].

protecting safety now and in the future.

2. The Butte County DA's Report Raises Concerns about Misrepresentations as Operation and Maintenance Expenses are Mischaracterized as "Funded by the Company"

Amici are concerned about the incorrect characterization of inspection expenses as "funded by the company," in the Butte County DA's report on p. 49, as inspection expenses are funded through the CPUC's General rate case and then passed through to customers in rates. The Butte County DA's report finds that PG&E's skimming on inspections, improper and uninformed inspections, and lack of records contributed to the felonies PG&E committed that led to the Camp Fire. The report states:

The evidence established PG&E electrical transmission expenditures were divided into two budget categories: 1) capital and 2) expense. The capital budget for the electric transmission division of PG&E was funded through customer rates which were determined by FERC "rate cases." The expense budget was funded by the company. Any money spent on the expense budget potentially reduced the amount of profit of the company. In general, inspection, patrol and maintenance of electrical transmission assets were paid from the expense budget.³⁷

If PG&E's representations to Butte County's Grand Jury led to the statement that the "expense budget was funded by the company," such a material mischaracterization would raise questions about whether PG&E committed perjury before the Butte County Grand Jury. This Court should order PG&E to admit or deny whether its statements led to the Butte County Report's characterization of the source of funding for transmission facility inspections.³⁸ If PG&E admits those facts, *Amici* respectfully suggests that the Butte County DA's office consider whether PG&E committed perjury before the Butte County Grand Jury.

³⁷ Butte County District Attorney, THE CAMP FIRE PUBLIC REPORT A SUMMARY OF THE CAMP FIRE INVESTIGATION, June 16, 2020, p. 48 [hereinafter *Butte County DA Camp Fire Report*] (citations omitted).

³⁸ *Cf.*, ORDER TO ADMIT OR DENY BUTTE COUNTY REPORT, No. CR 14-0175 WHA, June 17, 2020.

1 This Court should order PG&E to clarify whether it alleges that the expense budget
2 that funds inspections, as well as record-keeping and vegetation management is “funded by
3 the company,” or funded through the CPUC General Rate Case (GRC) or a FERC case.
4 The CPUC makes a distinction between activities funded by shareholders such as the
5 compensation of PG&E’s CEO, expenses that would be “funded by the company,” as
6 compared to expenses funded by ratepayers that “pass through” PG&E to cover approved
7 expenses. In May 2017 the CPUC approved PG&E’s GRC in Decision 17-05-013 “to
8 determine PG&E’s gas and electric system revenue requirements necessary for the utility
9 to recover the capital investments and annual operations and maintenance expenses at the
10 core of the utilities operations.”³⁹

11 *Amici* requests the opportunity for additional briefing on what this Court should
12 order to ensure that operation and maintenance funds approved by the CPUC are
13 appropriately spent to protect public safety and prevent the commission of additional
14 crimes by PG&E. *Amici* respectfully suggest that Judge Alsup order that PG&E be
15 required to “lock down” the expense budget approved in the CPUC current and pending
16 General Rate case and Wildfire Safety Plan. Such a lock down is appropriate to ensure that
17 PG&E is not incentivized or allowed to divert to PG&E profits any “savings” from
18 spending less than budgeted.

19 Further, the monitor in this probation case should be directed to conduct the audits
20 and activities necessary to ensure that PG&E’s expense and operations budget are not
21 diverted to profits, particularly for record-keeping, inspection, vegetation management,
22 and maintenance activities.

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25 ³⁹ CPUC, DECISION AUTHORIZING PACIFIC GAS AND ELECTRIC COMPANY’S
26 GENERAL RATE CASE REVENUE REQUIREMENT FOR 2017-2019, Decision 17-05-013,
27 Application 15-09-001, p. 1 (May 11, 2017) (approving a settlement of PG&E’s GRC
28 application); *Id.* at Appx. A, Results of Operations Summary of Adopted Increase Over
Authorized 2016 General Rate Case (reporting transmission expenses approved in the GRC
settlement).

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